

BEFORE THE COMMISSIONER OF INSURANCE
STATE OF COLORADO

Order No. O-12-044

AMENDED FINAL AGENCY ORDER

**IN THE MATTER OF COPIC INSURANCE COMPANY'S REQUEST FOR
EXEMPTIONS UNDER SECTION 26 OF DIVISION OF INSURANCE
REGULATION 4-4-1 AND REQUEST FOR DETERMINATION UNDER
SECTION 10-19-103(4), C.R.S.**

THIS MATTER comes before Jim Riesberg, Commissioner of Insurance for the State of Colorado ("Commissioner"), as the result of a Final Agency Order O-11-028 issued on July 27, 2011, regarding the Matter of COPIC Insurance Company's Request for Exemptions Under Section 26 of Division Of Insurance Regulation 4-4-1 and Request For Determination Under Section 10-19-103(4), C.R.S.

The Commissioner has considered and reviewed the Stipulation entered into by the Division of Insurance ("Division") and COPIC Insurance Company ("COPIC"), on September 28, 2011 and the Settlement Agreement entered into by the Division and COPIC on September 28, 2011. In accordance with the Stipulation and the Settlement Agreement this Amended Final Agency Order ("Amended FAO") amends FAO O-11-028. FAO O-11-028 shall remain in effect except to the extent it is not specifically modified herein.

The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times the Respondent, COPIC was licensed by the Division to write Accident and Health; General Casualty; and Professional Liability Insurance.
2. On July 2, 2010 the then Commissioner of Insurance, Marcy Morrison, entered Final Agency Order O-11-002, In the Matter of the Market Conduct Examination of COPIC Insurance Company.
3. On July 26, 2010 a limited hearing was held on COPIC's June 17, 2010 Request for Suspension of Modification Under Section 26 of Colorado Insurance Regulation 4-4-1, Concerning Requirements for Long-Term Care Insurance and COPIC's July 23, 2011 Request for Confirmation of Group

Status With Respect to Long-Term Care Insurance Under C.R.S. § 10-19-103(4)(d).

4. On July 27, 2010, after conclusion of the hearing, then Commissioner Marcy Morrison entered Final Agency Order O-11-028, which set forth findings of facts and conclusions of law.
5. On August 3, 2010, then Commissioner Marcy Morrison entered Amended Final Agency Order O-11-012, which modified Final Agency Order O-11-002.
6. On July 30, 2010, COPIC filed a Verified Complaint for Judicial Review and Postponement of Agency Action related to Final Agency Orders O-11-002 and O-11-012 ("Complaint") (*COPIC Insurance Co. v. State of Colorado, Dept. of Regulatory Agencies, Div. of Insurance*, Case No. 2010cv6135, District Court for the City and County of Denver).
7. The Defendants filed an Answer to the Complaint in Denver District Court on August 13, 2010.
8. On August 16, 2010 COPIC filed a Notice of Appeal related to Final Agency Order No. O-11-028 ("Appeal") (*COPIC Insurance Co. v State of Colorado, Dept. of Regulatory Agencies, Div. of Insurance*, Case No. 10CA1680, Colorado Court of Appeals).
9. The Denver District Court entered an Order on January 12, 2011 staying the District Court proceedings pending the outcome of the related Appeal.
10. The Appeal was fully briefed and was set for oral arguments on July 6, 2011. On June 8, 2011, upon a Joint Motion of the parties, the Court of Appeals granted a stay of the oral arguments and stayed the proceedings until October 6, 2011, pending the outcome of settlement negotiations between the parties.
11. The parties engaged in settlement negotiations and have reached resolution of all pending litigated matters.
12. Utilizing the numerical system set forth in Final Agency Order O-11-028 the following Findings of Facts set forth in Final Agency Order O-11-028 are hereby amended and shall now read as follows:

1.A limited hearing was held on July 26, 2010 regarding COPIC's June 17, 2010 Request for Suspension of Modification Under Section 26 of Colorado Insurance Regulation 4-4-1, Concerning Requirements for Long-Term Care Insurance and COPIC's July 23, 2011 Request for Confirmation of Group Status With Respect to Long-Term Care Insurance Under C.R.S. § 10-19-103(4)(d), the latter which related to whether

physicians who were insured under COPIC's professional liability insurance policy qualified as a "group" under § 10-19-103(4)(d), C.R.S.

30. COPIC submitted the Affidavit of former Commissioner of Insurance Jack Ehnes as evidence that physicians insured under COPIC's professional liability insurance policy qualified as a "group" for purposes of § 10-19-103(4)(d), C.R.S.

37. COPIC presented no evidence that any prior findings exists that accepted or defined that physicians insured under COPIC's professional liability insurance policy qualified as a "group" for purposes of § 10-19-103(4)(d), C.R.S.

42. Physicians insured under COPIC's professional liability insurance policy do not meet the definition of a group under § 10-19-103(4)(a), C.R.S., as the physicians/insureds who purchase professional liability policies from COPIC are not employees of the same employer or entity, and are not members of a labor organization.

43. Physicians insured under COPIC's professional liability insurance policy do not meet the definition of a group under § 10-19-103(4)(b), C.R.S., as the physicians/insureds who purchase professional liability policies from COPIC are not members of a professional, trade or occupational association.

44. Physicians insured under COPIC's professional liability insurance policy do not meet the definition of a group under § 10-19-103(4)(c), C.R.S., as the physicians/insureds who purchase professional liability policies from COPIC are not part of a trust. Although it was originally established as a trust, COPIC is now a for profit corporation under Colorado law. There are no owners of COPIC Trust.

45. Physicians insured under COPIC's professional liability insurance policy do not meet the definition of a group under § 10-19-103(4)(d), C.R.S., which states:

(d) A group other than described in paragraph (a), (b), or (c) of this subsection (4), subject to a finding by the commissioner that:

(I) The issuance of the group policy is not contrary to the best interest of the public;

(II) The issuance of the group policy which would result in economies of acquisition and administration; and

(III) the benefits are reasonable in relation to the premiums charged.

46. The Commissioner finds the physicians insured under COPIC's professional liability insurance policy do not meet the definition of a "group."

47. Although the Commissioner finds that the physicians insured under COPIC's professional liability insurance policy are not a group, and it is not necessary to make Findings of Facts related to subsections (I), (II) and (III) above, she elects in the alternative to make such Findings of Facts.

13. Utilizing the numerical numbering system set forth in Final Agency Order O-11-028 the following Conclusions of Law set forth in Final Agency Order O-11-028 are hereby amended and shall now read as follows:

1. The Commissioner has considered the evidence submitted by COPIC, including but not limited to COPIC's June 2, 2010 response to the draft MCE Report, COPIC's June 17, 2010 request for exemptions under Regulation 4-4-1 and all of the evidence heard and submitted at the July 26, 2010 limited hearing on whether the physicians insured under COPIC's professional liability insurance policy constitute a "group" under § 10-19-103(4), C.R.S for purposes of issuing group long-term care insurance. The Commissioner has the authority to make an independent determination on this issue based on COPIC's current Request for Determination Pursuant to § 10-19-103(4), C.R.S.

26. The LTC policy issued by COPIC is reinsured by MIG (also commonly known as Med America).

14. The amended Findings of Facts and Conclusions of law set forth in paragraphs 12 and 13 above are made only for the purpose of correcting a factual error that existed within FAO O-11-028, wherein it identified the issue before then Commissioner Morrison as to whether "COPIC" constituted a "group" under various statutory definitions rather than correctly referring to whether the physicians insured by COPIC's professional liability insurance policy constituted a "group". Notwithstanding the above factual amendments to FAO O-11-028, to the extent the Stipulation and Settlement Agreement, which provide for the continuation of the "Grandfathered Physician" group under COPIC's Long-Term Care policy, contradict the above Findings of Facts or Conclusions of Law, the Stipulation and Settlement Agreement shall prevail.


CONCLUSIONS OF LAW AND ORDER

15. The Division and COPIC, in order to resolve all matters pertaining to FAO-O-11-002, FAO O-11-012 and FAO O-11-028 and the referenced pending litigation in Denver District Court and the Court of Appeals, have entered into a Stipulation executed by the Division and COPIC, dated September 28, 2011 (“Stipulation”) and the Settlement Agreement executed by the Division and COPIC, dated September 28, 2011 (“Settlement Agreement”) which are now approved and incorporated herein by reference.
16. Notwithstanding the aforementioned Findings of Facts and Conclusions of Law, the Division will permit the “Grandfathered Physicians Group”, as it is defined in the Stipulation executed by the Division and COPIC on September, 28, 2011, to continue as a part of the COPIC § 10-19-103(4)(a) employee LTC group, for the sole purpose of COPIC providing continued LTC coverage to the Grandfathered Physician Group. COPIC shall not be allowed to add any additional physician to this group unless such physician becomes a COPIC employee. Renewals and coverage of the Grandfathered Physician Group shall continue under COPIC’s LTC-GMP-COPIC-112 policy.
17. COPIC's long-term care program offered to employees and the Grandfathered Physician Group shall thus be administered as a single group subject to the current and future statutes and regulations concerning groups formed pursuant to C.R.S. § 10-19-103(4)(a), employee groups, subject to the modifications recognized in Final Agency Order O-12-020 issued August 4, 2011, regarding COPIC’s Request for Suspension or Modification Under Section 26 of Insurance Regulation 4-4-1, Concerning Long-Term Care.
18. COPIC may renew all long-term care insurance certificates issued to the Grandfathered Physician Group until such time as none of the Grandfathered Group remain insured under the LTC-GMP-COPIC-112 policy and the policy’s individual certificates, because all of the certificates have been terminated and thus may not be renewed or reinstated pursuant to the terms of the policy and the certificates.
19. This Amended Final Agency Order amends FAO O-11-028. To the extent this Amended FAO, and the incorporated Stipulation and Settlement Agreement do not specifically modify or amend FAO O-11-028, the Findings of Facts and Conclusions of Law set forth in FAO O-11-028 shall remain in full force and effect.
20. Subject to the terms of the Stipulation, Settlement Agreement and this Amended FAO the Division shall not be prevented from commencing future agency action relating to the conduct of COPIC, which is not resolved according to the terms and conditions of the Stipulation, Settlement Agreement and this Amended FAO. Notwithstanding the foregoing, COPIC

and the Division agree that the Division may conduct other market conduct examinations of COPIC, as permitted by law, but the Division further agrees that such examination shall be conducted for an audit period that will commence no sooner than July 1, 2012.

21. Failure by COPIC to comply with the terms of this Amended FAO may result in additional actions, penalties and sanctions, as provided for by law. Nothing in this Amended FAO shall affect COPIC's rights to injunctive or other relief permitted by law in the event that the Division violates any of the terms of the Stipulation, Settlement Agreement or this Amended FAO.

WHEREFORE: It is hereby ordered that the Findings of Fact and Conclusions of Law contained in this Amended FAO are hereby adopted and filed and made an official record of this office this 28th day of September, 2011.


Jim Riesberg
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of September, 2011, I caused to be deposited the **AMENDED FINAL AGENCY ORDER** in the United States Mail via certified mailing with postage affixed and addressed to:

Steven A. Rubin
COPIC Insurance Company
7351 ~~751~~ Lowry Blvd.
ep Denver, CO. 80230


Eleanor Patterson
Market Regulation Admin.